

## WISCONSIN SUPREME COURT

### TABLE OF PENDING CASES

By Cornelia G. Clark, Clerk of Supreme Court

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The following table describes pending cases the Supreme Court has accepted on petition for review, bypass, certification and original jurisdiction.

The cases included for the first time (that is, the most recently accepted cases) are marked with an \* next to the case number. After the Supreme Court decides a case, the date of oral argument or date of submission on briefs is replaced with the date of the Supreme Court decision and abbreviated mandate. That mandate will generally be listed in the table for two months and then the case will be removed from the table.

The information in the table, from left to right, is as follows:

- the case number;
- an abbreviated caption of the case (case name);
- a statement of the issue(s);
- the date the Supreme Court accepted the case;
- the method by which the case came to the Supreme Court: REVW = Petition for review, CERT = Certification, BYPA = Petition to bypass, ORIG = Original Action, WRIT = Petition for supervisory writ;
- the date of oral argument or submission on briefs; or the date of the Supreme Court decision and an abbreviated mandate;
- the Court of Appeals district from which the case came, if applicable; the county;
- the date of the Court of Appeals decision, if applicable;
- whether the Court of Appeals decision is published or unpublished, and, if it is published, the citations to the official reports for the Court of Appeals decision.

The statement of the issue is cursory and does not purport to be an all-inclusive, precise statement of the issues in the case. Readers interested in a case should determine the precise nature of the issues from the record and briefs filed with the Supreme Court.

The following table covers cases accepted through and decisions issued through **April 2, 2004**. Please direct any comments regarding this table to Cornelia G. Clark, Clerk of Supreme Court, P.O. Box 1688, Madison, WI 53701-1688, telephone (608)266-1880.

# APPENDIX

## WISCONSIN SUPREME COURT PENDING CASES

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Case No.	Caption/Issue(s)	SC Accepted	CA Dist/ Cty	CA Decision
00-0072	<u>Y. Maurin, et al v. G. Hall, M.D., et al</u>  Are the caps on noneconomic damages in a wrongful death case constitutional?  Can the plaintiffs in a medical malpractice action, where there is a death caused by medical negligence, recover both noneconomic damages for medical malpractice and wrongful death?	12/16/2003 CERT Oral Arg 04/07/2004 <b>Racine</b>	2 Wash	---
00-1425	<u>State v. E. Burris</u>  Whether a circuit court is required to consider alternatives to commitment before the revocation of supervised release of a person committed as a sexual violent person under ch. 980 when a finding has been made that the safety of others requires revocation?	01/14/2003 REVW Oral Arg 09/09/2003	4 Rock	11/20/2002 Pub 2002 WI App 262 258 Wis 2d 454 654 NW2d 866
00-2426	<u>In re the Commitment of G. Franklin: State v. G. Franklin</u>  Should this court take review to determine the applicable rule for admission of other acts evidence in ch. 980 cases?	09/12/2003 REVW <b>Affirmed</b> <b>04/01/2004</b> <b>2004 WI 38</b>	1 Milw	04/30/2003 Unp
00-3318	<u>In re the Commitment of J. Lombard: State v. J. Lombard</u>  Was the petitioner denied the effective assistance of counsel when, at a ch. 980 commitment trial, trial counsel failed to object to the admission of petitioner's pre-petition evaluation on the basis that the evaluating psychologist had not given a <u>Miranda</u> warning prior to the interview?	10/21/2003 REVW Oral Arg 03/12/2004	4 Dane	08/27/2003 Pub 2003 WI App 163 266 Wis 2d 887 669 NW2d 157
01-0051-CR	<u>State v. C. Gallion</u>  Did the circuit court abuse its discretion by giving undue weight to the victim's character, or to the comparative characteristics of the victim and the defendant in determining the defendant's sentence under truth-in- sentencing (TIS)?  What is the appropriate standard of review that should be used by an appellate court in determining whether a sentence is too harsh under TIS?	02/19/2003 REVW Oral Arg 09/17/2003	1 Milw	11/20/2002 Pub 2002 WI App 265 258 Wis 2d 473 654 NW2d 446
01-0509-CR	<u>State v. C. Hampton</u>  When taking a guilty plea, must the circuit court personally tell the defendant that the court is not bound by the parties' agreement regarding sentencing recommendations?  Is the circuit court required to conduct an evidentiary hearing on a motion for a plea withdrawal when the defendant states that it was not understood that the court could impose a sentence greater than the maximum requested in a plea agreement?	02/19/2003 REVW Oral Arg 09/17/2003	1 Milw	12/18/2002 Pub 2002 WI App 293 259 Wis 2d 455 655 NW2d 131

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Case No.	Caption/Issue(s)	SC Accepted	CA Dist/Cty	CA Decision
01-1402	<u>State v. W. Thornton</u>  Is the petitioner's Peete/Howard "nexus" claim barred under Wis. Stat. § 974.06(4) and <u>State v. Escalona-Naranjo</u> , 185 Wis. 2d 168, 517 N.W.2d 157 (1994)?  Did the circuit court's failure to instruct on the "nexus" between possession of the gun and the substantive offenses of conviction, as required by <u>State v. Peete</u> , 185 Wis. 2d 4, 517 N.W.2d 149 (1994), and <u>State v. Howard</u> , 211 Wis. 2d 269, 564 N.W.2d 753 (1997), mandate that the sentence enhancer on those offenses be vacated?	10/21/2003 REVW <b>Affirmed</b> <b>03/30/2004</b> <b>2004 WI 35</b>	1 Milw	04/24/2002 Unp
01-1590 01-1591	<u>Mitchell Bank v. T. Schanke, et al</u> <u>T. Schanke v. Mitchell Street State Bank</u> (Consol.)  Whether the foreclosure of a mortgage is barred because the note referenced in the mortgage cannot be found?  Is the dragnet clause of a mortgage unenforceable because it does not state the actual amount of the obligation even when the maker of the obligation admits to the coverage of the mortgage?	01/14/2003 REVW <b>Reversed &amp; Remanded</b> <b>02/27/2004</b> <b>2004 WI 13</b>	2 Wauke	09/25/2002 Pub 2002 WI App 225 257 Wis 2d 723 652 NW2d 636
01-1743	<u>D. Eastman, et al v. Conseco Finance Servicing Corp.</u>  Did the circuit court err in holding that an arbitration clause included in the contract between the parties was unconscionable for lack of mutuality pursuant to the Wisconsin Consumer Act, Wis. Stat. § 422.202(2)?	09/26/2002 CERT	3 Polk	---
01-1916-CR	<u>State v. S. Walters</u>  Did the circuit court erroneously exercise its discretion when it excluded expert testimony that the defendant does not have character traits consistent with those persons known to have sexually abused children?  Did the court of appeals err in concluding that this court's decision in <u>State v. Davis</u> , 2002 WI 75, 254 Wis. 2d 1, 645 N.W.2d 913, compels the admission of the character and profile analysis testimony as set forth under <u>State v. A.P.</u> , 223 Wis. 2d 777, 589 N.W.2d 674 (Ct. App. 1998)?	09/12/2003 REVW <b>Reversed</b> <b>03/09/2004</b> <b>2004 WI 18</b>	2 Walw	02/25/2003 Pub 2003 WI App 24 260 Wis 2d 210 659 NW2d 151
01-2345	<u>State ex rel. P. Griffin v. J. Smith</u> (Consol. w/ 02-1320)  Whether a probationer has a right to the effective assistance of counsel on appeal from a probation revocation decision when counsel has promised to file a certiorari petition?	03/21/03 CERT <b>Reversed &amp; Remanded</b> <b>03/30/2004</b> <b>2004 WI 36</b>	1 Milw	---
01-2461	<u>In re the Commitment of W. Morford: State v. W. Morford</u>  Did the circuit court abuse its discretion when it reconsidered its order for supervised release of a person committed under Ch. 980 pursuant to a motion filed by the State under Wis. Stat. § 806.07(1)(h)?	03/13/2003 REVW <b>Rights Declared</b> <b>02/03/2004</b> <b>2004 WI 5</b>	1 Milw	12/18/2002 Unp

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01-2649	<u>M.Wenke, et al v. Gehl Co.</u>  Did <u>Landis v. Physicians Ins. Co. of Wisconsin, Inc.</u> , 2001 WI 86, 245 Wis. 2d 1, 628 W.W.2d 893, "functionally" overrule <u>Leverence v. United States Fidelity &amp; Guaranty</u> , 158 Wis. 2d 64, 462 N.W.2d 218 (Ct. App. 1990), which held that Wisconsin's borrowing statute, Wis. Stat. § 893.07 has no application to a foreign state's statute of repose?	12/16/2003 REVW Oral Arg 04/27/2004	2 Was	09/24/2003 Pub 2003 WI App 189 267 Wis 2d 221 669 NW2d 789
01-2710	<u>B. Pierce v. Physicians Ins. Co. of Wis., Inc., et al</u>  Can a mother who gave birth to a stillborn child recover "bystander" damages under ch. 655 for negligent infliction of emotional distress, see <u>Finnegan v. Wisconsin Patients Compensation Fund</u> , 2003 WI 98, 263 Wis. 2d 574, 666 N.W.2d 797 and <u>Bowen v. Lumbermen's Mut. Cas. Co.</u> , 183 Wis. 2d 627, 517 N.W.2d 432 (1994)?	01/23/2004 REVW Oral Arg 04/28/2004	3 Outag	12/17/2003 Unp
01-3014	<u>In re the Marriage of: L. Rohde-Giovanni v. P. Baumgart</u>  Did the court of appeals err in concluding that under child support law, a maintenance recipient's expenses for assisting an adult child with postsecondary education can never be considered in a maintenance determination or in calculating the marital standard of living upon which the determination is based?	10/01/2003 REVW Oral Arg 01/14/2004 <b>Affirmed</b> <b>03/25/2004</b> <b>2004 WI 27</b>	4 Dane	07/30/2003 Pub 2003 WI App 136 266 Wis 2d 339 667 NW2d 718
01-3051	<u>T. Van Lare, et al v. Vogt, Inc.</u>  Whether the economic loss doctrine bars a claim for strict responsibility misrepresentation in a real estate transaction where the alleged misrepresentations are contained in a contract between the parties and the claimed damages are solely for pecuniary loss?	11/06/2003 CERT Oral Arg 03/10/2004	2 Wauke	---
01-3093-CR 01-3094-CR	<u>State v. V. Naydihor</u>  Was the defense counsel ineffective for failing to object to an alleged breach of the plea agreement by the state?  Did the circuit court err in relying on new information concerning the condition of the victim in resentencing the defendant to longer incarceration than imposed at the original sentencing?	09/12/2003 REVW Oral Arg 12/17/2003	2 Kenos	11/20/2002 Pub 2002 WI App 272 258 Wis 2d 746 664 NW2d 479
01-3316	<u>K. J alas Franke v. M. Franke</u>  Is an arbitration award, confirmed pursuant to Wis. Stat. § 788.09 and with judgment entered in conformity therewith, attackable pursuant to Wis. Stat. § 806.07?  Does the date of the arbitration award or the date of the divorce judgment control for Wis. Stat. § 767.27 financial disclosure purposes?	01/14/2003 CERT <b>Affirmed,</b> <b>Reversed,</b> <b>Remanded</b> <b>02/06/2004</b> <b>2004 WI 8</b>	2 Wash	---
01-3393-CR	<u>State v. Gary M.B.</u>  Was the circuit court's admission of the defendant's prior convictions that occurred more the 20 years before his trial in this case "harmless error" when the outcome of the case hinged on the defendant's credibility?	05/05/2003 REVW Oral Arg 10/07/2003 <b>Affirmed</b> <b>03/26/04</b> <b>2004 WI 33</b>	4 Grant	04/30/2003 Pub 2003 WI App 72 261 Wis 2d 811 661 NW2d 435

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01-3396	<u>A. Donaldson v. Bd of Commissioners of Rock-Koshkonong Lake Dist.</u>  Is an owner of property in a public inland lake protection and rehabilitation district precluded from seeking detachment from the district unless the owner files an action challenging the creation of the district, or shows a change in circumstances since the creation of the district?	05/05/2003 REVV Oral Arg 10/08/2003	4 Rock	02/25/2003 Pub 2003 WI App 26 260 Wis 2d 238 659 NW2d 66
02-0359	<u>DeWitt Ross &amp; Stevens v. Galaxy Gaming &amp; Racine Ltd. Partnership, et al</u>  When the amount recovered exceeds the offer of settlement made pursuant to Wis. Stat. § 807.01, is the prevailing party entitled to recover 12% interest pursuant to Wis. Stat. § 807.01(4) in addition to damage's interest set forth in the contract?	12/16/2003 REVV Oral Arg 04/08/2004	4 Dane	09/24/2003 Pub 2003 WI app 190 267 Wis 2d 233 670 NW2d 74
02-0456	<u>A. Keup v. Wis. Dept. of Health &amp; Family Services, et al</u>  After the state has retroactively compensated a medical assistance (MA) provider for nursing home services provided to a "private pay" patient and the provider has reimbursed the patient in the amount of the MA payment, does the patient have a federally protected right to reimbursement from the provider for the amount originally paid by the patient in excess of the MA reimbursement?  Did the Division of Hearings and Appeals have jurisdiction under Wis. Stat. § 49.45(5)(a) to grant the plaintiff's request for full reimbursement from the MA provider?	02/19/2003 CERT <b>Affirmed</b> <b>03/04/2004</b> <b>2004 WI 16</b>	2 Ozauk	---
02-0469	<u>Randy A.J. v. Norma I.J. and Brendan B.</u>  Does the "equitable parent" doctrine take precedence over the rebuttable presumption of paternity established by genetic tests that show a 99.9% likelihood that a man other than the husband of the child's mother is the child's father?	03/13/2003 REVV Oral Arg 09/16/2003	2 Wauke	12/18/2002 Pub 2002 WI App 307 259 Wis 2d 120 655 NW2d 195
02-0528	<u>D. Lynch, et al v. Carriage Ridge, LLC, et al</u>  What is the range of equitable remedies available and what purposes must they serve after there has been a finding of "oppression" by the managing partners in a limited liability corporation (LLC) created under ch. 183?  Did the circuit court err when it determined that the managing members of the LLC oppressed the minority members by issuing a capital call?	01/23/2004 REVV Oral Arg 04/29/2004	4 Dane	08/27/2003 Unp
02-0542	<u>P.H. Roth v. LaFarge School Dist. Bd. of Canvassers</u>  Did the court of appeals incorrectly interpret Wis. Stat. §§ 7.50(2)(c) and 7.50(2)(cm) by holding that those statutes, as a matter of law, require that the "partially erased" no vote be counted?	05/05/2003 REVV <b>Affirmed</b> <b>02/04/2004</b> <b>2004 WI 6</b>	4 Vernon	12/18/2002 Pub 2002 WI App 309 259 Wis 2d 349 655 NW2d 471

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02-0947-CR	<u>State v. M.D. Jackson</u>  What effect does Wis. Stat. § 939.62(1)(b), the habitual criminality enhancer, have on the truth-in-sentencing law relative to the maximum period of initial confinement when there are multiple charges involved in the underlying conviction?	08/13/2003 REVV Oral Arg 11/11/2003 <b>Affirmed</b> <b>03/26/04</b> <b>2004 WI 29</b>	1/4 Milw	05/28/2003 Unp
02-0979	<u>Town of Delafield v. E. Winkelman, et al</u>  Does <u>Forest County v. Goode</u> , 219 Wis. 2d 654, 579 N.W.2d 715 (1998), mandate review of equity arguments by a circuit court in a zoning enforcement action commenced pursuant to Wis. Stat. § 62.23(8)?	09/12/2003 REVV <b>Affirmed</b> <b>03/05/2004</b> <b>2004 WI 17</b>	2 Wauke	05/28/2003 Pub 2003 WI App 92 264 Wis 2d 264 663 NW2d 324
02-1003	<u>B. Baumeister, et al v. Automated Products, Inc., et al</u>  Did the court of appeals appropriately apply the duty analysis in light of this court's holding in <u>Alvarado v. Sersch</u> , 2003 WI 55, 262 Wis. 2d 74, 662 N.W.2d 350?  Do all elements of a negligence action have to be without merit and found frivolous before costs, pursuant to Wis. Stat. § 809.25(3), are available to the prevailing party?	02/24/2004 REVV	4 Dane	12/17/2003 Unp
02-1034	<u>S. Tietsworth, et al v. Harley-Davidson, Inc., et al</u>  Should a party be permitted to pursue claims for fraudulent concealment or violation of Wis. Stat. § 100.18 based on an alleged propensity that the product will fail?  Does the economic loss doctrine preclude fraud claims based upon alleged misrepresentations of the quality or character of a warranted product where the purchaser elects to keep the product rather than rescind the transaction?	06/12/2003 REVV Oral Arg 11/05/2003 <b>Reversed</b> <b>03/26/04</b> <b>2004 WI 32</b>	1 Milw	04/30/2003 Pub 2003 WI App75 261 Wis 2d 755 661 NW2d 450
02-1166	<u>Wis. Citizens Concerned for Cranes and Doves, et al v. Wis. Dept. of Natural Resources (DNR)</u>  Does Wis. Stat. § 29.014(1) give DNR the authority to adopt an administrative rule establishing a hunting season for mourning doves?  Is Wis. Stat. § 29.001(33) ambiguous in its definition of "game?"	06/12/2003 REVV Oral Arg 01/15/2004	4 Dane	04/30/2003 Pub 2003 WI App 76 263 Wis 2d 370 661 NW2d 858
02-1203-CR	<u>State v. D. McDowell</u>  Whether and under what circumstances may a criminal defense attorney require his or her client to testify in an unaided narrative format rather than in the usual question and answer format in order to avoid complicity in what is believed will be perjured testimony?	10/21/2003 REVV Oral Arg 02/11/2004	1 Milw	08/27/2003 Pub 2003 WI App 168 266 Wis 2d 599 669 NW2d 204
02-1249	<u>St. Paul Fire &amp; Marine Ins. Co., et al v. C. Keltgen</u>  Does the rule against double recovery bar a claim for damages for pain and suffering under Wis. Stat. § 51.61, the patient's rights statute, where the patient also received benefits under the Worker's Compensation Act based upon the same facts, regardless of whether the patient was fully compensated?	10/01/2003 REVV <b>Affirmed</b> <b>04/02/2004</b> <b>2004 WI 37</b>	3 Eau Claire	03/26/2003 Pub 2003 WI App 53 260 Wis 2d 523 659 NW2d 906

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02-1273	<u>R. Kerl, et al v. D. Rasmussen, Inc., et al</u>  What standard of "vicarious liability" should be adopted in the context of a franchise relationship?  Does such standard applied to the facts situation in this case warrant summary judgment against the plaintiff?	12/16/2003 REVW Oral Arg 04/06/2004 <b>Racine</b>	4 Dane	11/19/2003 Pub 2003 WI App 226 267 Wis 2d 827 672 NW2d 71
02-1287-CR	<u>State v. W. Henning</u>  Does the double jeopardy clause prohibit the state from retrying the defendant on bail jumping charges because the jury acquitted the defendant on charges that were the basis of the bail jumping charges?	07/09/2003 REVW Oral Arg 12/17/2003	2 Racine	03/26/2003 Pub 2003 WI App 54 261 Wis 2d 664 660 NW2d 698
02-1320	<u>State ex rel. M. Glenn v. J. Litscher</u> (Consol. w/ 01-2345)  Whether a probationer has a right to the effective assistance of counsel on appeal from a probation revocation decision when counsel has promised to file a certiorari petition?	03/21/03 CERT <b>Reversed &amp; Remanded 03/30/2004 2004 WI 36</b>	1 Milw	---
02-1416	<u>J. Cole v. Y. Hubanks, et al</u>  Does the Wisconsin's "firefighter's rule," first adopted in <u>Hass v. Chicago &amp; North Western Railway</u> , 48 Wis. 2d 321, 179 N.W.2d 885 (1970), and later expanded by <u>Pinter v. American Family Mutual Ins. Co.</u> , 2000 WI 75, 236 Wis. 2d 137, 613 N.W.2d 110, to include emergency medical technicians within the scope of the rule, bar a police officer from suing the owners of a stray dog for injuries sustained while capturing the dog?	04/22/2003 CERT Oral Arg 10/07/2003	1 Milw	---
02-1426	<u>S. Glenn, et al v. M. Plante, M.D., et al</u>  Whether <u>Burnett v. Alt</u> , 224 Wis. 2d 72, 589 N.W.2d 21 (1999) allows the circuit court to compel a treating physician to provide expert testimony regarding the standard of care in a medical negligence action when the treating physician has expressed a reluctance to testify and where the only compelling need for the expert's testimony is allegedly due to the plaintiff's failure to produce another expert willing to testify on the issue of standard of care?	10/01/2003 REVW <b>Reversed &amp; Remanded 03/24/2004 2004 WI 24</b>	1 Milw	05/28/2003 Pub 2003 WI App 96 264 Wis 2d 361 663 BW2d 375
02-1515	<u>Harold Sampson Children's Trust, et al v. The Linda Gale Sampson 1979 Trust, et al</u>  Whether an attorney's production of documents to opposing counsel constitutes a waiver of the attorney-client privilege if the client does not know of or consent to the production or waiver?	10/01/2003 REVW Oral Arg 03/09/2004	1 Milw	07/30/2003 Pub 2003 WI App 141 265 Wis 2d 803 667 NW2d 831
02-1540-CR	<u>State v. J. Kyles</u>  Whether the police had a reasonable objective basis to suspect that the defendant might be armed and dangerous before performing a protective search of the defendant during a traffic stop; see <u>State v. Mohr</u> 2000 WI App 111, 235 Wis. 2d 220, 613 N.W.2d 186?	06/12/2003 REVW <b>Affirmed 03/02/2004 2004 WI 15</b>	2 Kenos	04/30/2003 Unp

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02-1542	<u>State v. O. Hayes</u>  Whether a criminal defendant can raise an issue related to the sufficiency of the evidence directly to the court of appeals?  If so, was the evidence presented at trial sufficient to allow the jury to find the defendant guilty of the offense of second-degree sexual assault?	09/12/2003 REVW Oral Arg 01/13/2004	4 Rock	05/28/2003 Pub 2003 WI App 99 264 Wis 2d 377 663 NW2d 351
02-1582	<u>R. Beecher v. LIRC, et al</u>  Whether <u>Balczewski v. DILHR</u> , 76 Wis. 2d 487, 251 N.W.2d 794 (1997) places the prima facie burden on an worker in odd-lot status to prove permanent total disability, which then shifts to the employer, or must the worker make a greater initial showing that a reasonable effort was made to secure suitable employment?	10/01/2003 REVW Oral Arg 01/15/2004	2 Kenos	05/28/2003 Pub 2003 WI App 100 264 wis 2d 394 663 NW2d 316
02-1618	<u>State ex rel. R. Ziervogel, et al v. Washington County Board of Adjustment, et al</u>  In determining whether to grant a variance, is the local board of adjustment required to first consider whether the requested variance conflicts with the public interest underlying the zoning law at issue before applying the "no reasonable use" test?  Does a strictly vertical expansion of a residence on a property with a legally non-conforming shoreland setback conflict with the public interest underlying the setback requirement?	06/12/2003 REVW <b>Reversed &amp; Remanded</b> <b>03/19/2004</b> <b>2004 WI 23</b>	2 Wash	04/30/2003 Pub 2003 WI App 82 263 Wis 2d 321 661 NW2d 884
02-1681	<u>L. Haase v. Badger Mining Corp.</u>  Did the court of appeals err when it adopted Section 5 of the Restatement (Third) of Torts for strict product liability claims?  Did the court of appeals err when it found that the manufacturer of foundry sand could not be held strictly liable under Section 402A because the product had undergone a substantial change?	01/23/2004 REVW Oral Arg 04/26/2004	2 Winne	09/24/2003 Pub 2003 WI App 192 266 Wis 2d 970 669 N.W.2d 737
02-1727	<u>Kenosha Hosp. &amp; Med. Center v. J. Garcia, et al</u>  Was the garnishee properly served with an earning's garnishment notice that was the result of a judgment against the defendant?  Did the circuit court err in granting a default judgment against the garnishee, for the entire unsatisfied judgment against the defendant, due to their failure to respond to the garnishment complaint?  Did the plaintiff violate the automatic stay of the U.S. Bankruptcy Court when it moved for default judgment against the garnishee?	09/12/2003 REVW Oral Arg 12/17/2003	2 Kenos	07/30/2003 Pub 2003 WI App 142 265 Wis 2d 900 667 NW2d 851
02-1790	<u>S. Hoyme v. J. Brakken</u>  Whether a party can challenge the constitutionality of a circuit court ruling by filing a motion for relief under Wis. Stat. § 806.07(1)(h)?  What standard of review shall an appellate court employ in determining whether an appeal is frivolous pursuant to Wis. Stat. § 809.25(3)(c)2?	11/17/2003 REVW Oral Arg 03/10/2004 <b>Affirmed</b> <b>03/25/2004</b> <b>2004 WI 26</b>	3 Marin	08/27/2003 Unp

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Case No.	Caption/Issue(s)	SC Accepted	CA Dist/Cty	CA Decision
02-1809-CR	<u>State v. J. Crochiere</u>  May the circuit court consider the department of correction's placement and evaluation of a prisoner as new information, and as the basis to modify a previously imposed sentence under truth-in-sentencing?	10/01/2003 REVW Oral Arg 01/13/2004	3 Marat	07/30/2003 Unp
02-1869-CR	<u>State v. I. Evans</u>  Did the circuit court err in excluding the testimony of the defendant's proffered alibi witnesses, and in denying his pretrial motion to exclude the inculpatory statement he allegedly gave to the police following his arrest?  Did the court of appeals err in reinstating the defendant's direct appeal on a claim of ineffective assistance of appellate counsel six years after the time for a direct appeal had expired and after the defendant had already pursued a postconviction motion pursuant to Wis. Stat. § 974.06?	12/16/2003 REVW Oral Arg 04/07/2004 <b>Racine</b>	1 Milw	08/27/2003 Unp
02-1915	<u>T. Kolupar v. Wilde Pontiac Cadillac, Inc.</u>  Whether the circuit court erroneously exercised its discretion in the amount of attorney's fees and costs awarded to plaintiff pursuant to Wis. Stat. § 218.01(9)b?	10/21/2003 REVW Oral Arg 03/12/2004	1 Milw	08/27/2003 Pub 2003 WI 175 266 Wis 2d 659 668 NW2d 798
02-1974	<u>Central Corp. v. Research Products Corp.</u>  Were there issues of disputed material facts and inferences sufficient to preclude summary judgment as to whether there was a "community of interest" between Central Corp. and Research Products Corp. that would establish a "dealership" under Wis. Stat. § 135.02(3)?	12/16/2003 REVW Oral Arg 04/01/2004	2 Winne	08/27/2003 Unp
02-2002	<u>M. Seizinger, M.D. v. Community Health Network, et al</u>  Does the legal representation of a physician at a peer review hearing constitute the practice of law thereby requiring representation by a licensed Wisconsin attorney?  If so, should there be an exception to the unauthorized practice of law statute, Wis. Stat. § 757.30 (2001-02), to allow for such unlicensed representation?	05/05/2003 CERT Oral Arg 11/04/2003 <b>Affirmed</b> <b>03/25/2004</b> <b>2004 WI 28</b>	2 Green Lake	---
02-2035	<u>Beloit Liquidating Trust v. J. Grade, et al</u>  Was this action, otherwise barred by the two-year statute of limitations for intentional torts under Wis. Stat. § 893.57, timely because of a two-year extension provided for by 11 U.S.C. § 108(a) pertaining to certain bankruptcy matters?  Do the officers and directors of a Wisconsin-based corporation owe a fiduciary duty to the corporation's creditors when the corporation is a going concern?  Can the court of appeals apply issue preclusion when the question of issue preclusion has never been addressed by the circuit court, as discussed on pages 32-35 of the petition for review?	10/21/2003 REVW Oral Arg 02/19/2004	1 Milw	08/27/2003 Pub 2003 WI App 176 266 Wis 2d 388 669 NW2d 232

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# APPENDIX

## WISCONSIN SUPREME COURT PENDING CASES

By Cornelia G. Clark, Clerk of Supreme Court  
(608) 266-1880

Case No.	Caption/Issue(s)	SC Accepted	CA Dist/Cty	CA Decision
02-2106	<u>In the Interest of Cesar G., a Person Under the Age of 18: State v. Cesar G.</u>  Does Wis. Stat. § 938.34(16) authorize the juvenile court to stay a dispositional order requirement that a delinquent child register as a sex offender?  If the circuit court has discretion to stay a disposition order to register as a sex offender, what criteria must the court consider to properly exercise that discretion?	09/12/2003 REVW Oral Arg 03/24/2004	3 Brown	05/28/2003 Unp
02-2216-CR	<u>State v. D.M. Malone</u>  May the police, during a routine traffic stop, request passengers, as well as the driver, to exit the vehicle and individually ask them questions that may be reasonably related to the nature of the stop?	08/13/2003 CERT Oral Arg 11/06/2003	2 Manito	---
02-2260	<u>A. Garcia v. Mazda Motor of America, Inc., et al</u>  Does Wisconsin's "Lemon Law" require a consumer to use only specific statutory terminology when requesting a comparable vehicle in exchange for an alleged "lemon" as set forth under Wis. Stat. § 218.0171(2)(c)?  Do the specific statutory terminology provisions of Wis. Stat. § 218.0171(2)(c) apply even when a consumer provides notice to a manufacturer that the provisions under this statute are being invoked and the manufacturer acknowledges the notice as such?	12/16/2003 REVW Oral Arg 04/06/2004 <b>Racine</b>	2 Wauke	10/28/2003 Pub 2003 WI App 208 267 Wis 2d 622 671 NW2d 317
02-2322-FT	<u>State, et al v. City of Rhinelander, et al</u>  Is the City of Rhinelander entitled to seek review of a 2001 court of appeals' decision in light of the supreme court's decision in <u>Johnson Controls v. Employers Insurance</u> , 2003 WI 108, which overruled <u>City of Edgerton v. General Casualty Co. of Wisconsin</u> , 184 Wis. 2d 750, 517 N.W.2d 463 (1994), <u>cert denied</u> 514 U.S. 1017 (1995); did an umbrella policy exclude coverage for groundwater pollution from a landfill to third party property?	10/21/2003 REVW <b>02/18/2004</b> <b>Vol. Dism.</b>	3 Oneida	04/30/2003 Pub 2003 WI App 87 263 Wis 2d 311 611 NW2d 509
02-2332-CR	<u>State v. T. Greve</u>  Does <u>State v. Crowell</u> , 149 Wis. 2d 849, 440 N.W.2d 352 (1989), which construed Wis. Stat. § 972.15 as limiting the use of a court ordered presentence investigation report to postconviction settings, extend to privately obtained presentence memoranda?  Should privately obtained presentence memoranda be constitutionally imbued with confidentiality?	07/09/2003 CERT Oral Arg 11/05/2003	2 Walw	---
02-2400	<u>State v. Waushara County Board of Adjustment, et al</u>  Considering <u>Snyder v. Waukesha County Zoning Board of Adjustment</u> , 74 Wis. 2d 468, 247 N.W.2d 98 (1976), and <u>State v. Kenosha County Board of Adjustment</u> , 218 Wis. 2d 396, 577 N.W.2d 813 (1998), and <u>State v. Outagamie County Board of Adjustment</u> , 2001 WI 78, 244 Wis. 2d 613, 628 N.W.2d 376, what is the correct legal standard to be applied by a board of adjustment when considering the issue of an area variance?	09/12/2003 REVW Oral Arg 12/04/2003	4 Waush	Summary Disp.

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Case No.	Caption/Issue(s)	SC Accepted	CA Dist/Cty	CA Decision
02-2404-CR	<u>State v. J. Guerard</u>  Was the defendant denied his right to effective assistance of counsel when his trial counsel failed to gain admission of out-of-court statements that implicated his brother as the perpetrator of the crimes of which the defendant was convicted?	12/16/2003 REVV Oral Arg 04/26/2004	2 Ozauk	11/19/2003 Unp
02-2433-CR	<u>State v. K. Harris</u>  Did the court of appeals err when it held that Wis. Stat. § 971.23.(1)(h), which requires the district attorney, upon demand, to disclose "any exculpatory evidence" is not limited to evidence that is constitutionally required to be disclosed?	10/01/2003 REVV Oral Arg 02/11/2004	2 Walw	07/30/2003 Pub 2003 WI App 144 266 Wis 2d 200 667 NW2d 813
02-2490-W	<u>State ex rel. R. Kalal, et al v. Circuit Court for Dane County, the Hon. J. Finn, presiding, et al</u>  Did the circuit court err in allowing the filing of a privately drafted criminal complaint, under Wis. Stat. § 968.02(3), after determining that the district attorney refused to file a complaint?	10/01/2003 REVV Oral Arg 01/14/2004	4 Dane	Memo Opn.
02-2555-CR	<u>State v. J. Allen</u>  Was it an erroneous exercise of the circuit court's discretion when it refused to hold an evidentiary hearing on the defendant's claim of ineffective assistance of counsel where the pleadings filed by the defendant set forth specific instances of ineffectiveness, see <u>State v. Bentley</u> , 201 Wis. 2d 303, 548 N.W.2d 50 (1996)?	01/23/2004 REVV Oral Arg 04/28/2004	1 Milw	10/28/2003 Unp
02-2628	<u>M. Fandrey, et al v. American Family Mutual Ins. Co.</u>  Do the traditional policy considerations that preclude recovery in tort cases apply to actions under Wis. Stat. § 174.02(1) or has the legislature, by enacting a strict liability statute, precluded the court from considering these factors because the legislature has declared the state's public policy?  If public policy analysis applies, did the circuit court correctly conclude that public policy bars the action in this case?	06/12/2003 CERT Oral Arg 11/04/2003	3 Marat	---
02-2642-W	<u>State ex rel. S. Labine v. S. Puckett</u>  Is the petitioner, who is currently serving a Wisconsin prison sentence in an out-of-state correctional facility, a "prisoner" within the meaning of Wis. Stat. § 814.29(1m) and hence entitled to a waiver of costs and fees without first demonstrating that his underlying pleading states a claim upon which relief may be granted as required by Wis. Stat. § 814.29(1)(c)?	10/09/2003 REVV Oral Arg 02/10/2004 <b>Review Dismissed 03/25/2004 2004 WI 25</b>	4 Dane	Memo Opn.
02-2781-CR	<u>State v. J. Carprue</u>  Did the circuit court's questioning of a witness outside the jury's presence, without objection from the defense, prejudice the defendant by potentially assisting the state in questioning that witness on rebuttal?  Was the defense counsel's performance deficient because he did not object to the circuit court's questioning of the witness?	10/01/2003 REVV Oral Arg 01/14/2004	1 Milw	07/30/2003 Pub 2003 WI App 148 266 Wis 2d 168 667 NW2d 800

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Case No.	Caption/Issue(s)	SC Accepted	CA Dist/Cty	CA Decision
02-2793-CR	<u>State v. V. Johnson</u>  Did the circuit court err in allowing cross-examination by the state that sought the petitioner's opinion as to the credibility and honesty of the state's witnesses?  Was the petitioner denied effective assistance of counsel when his trial attorney failed to object to the alleged improper cross-examination by the state?	11/17/2003 REVW Oral Arg 03/10/2004	1 Milw	08/27/2003 Unp
02-2817	<u>James Cape &amp; Sons Co. v. T. Mulcahy</u>  Pursuant to Wis. Stat. § 66.0901(5), under what circumstances is a construction project bidder allowed to rescind its bid and receive a refund of the proposal guaranty after the bidder discovers an error in the bid after the opening of the bids, but before the awarding of the contract; see <u>Krason v. Village of Almond</u> , 233 Wis. 2d 513, 290 N.W.2d 152 (1940), and <u>Nelson, Inc. v. Sewerage Commission of Milwaukee</u> , 72 Wis. 2d 400, 241 N.W.2d 390 (1976)?	01/23/2004 REVW Oral Arg 04/29/2004	4 Dane	11/19/2003 Pub 2003 WI App 229 672 NW2d 292
*02-2837	<u>Meriter Hospital v. Dane County</u>  Whether Wis. Stat. § 302.38 requires Dane County to pay medical bills for a patient who was a prisoner when admitted to the hospital but whose charges were dismissed shortly thereafter?	03/23/2004 REVW	4 Dane	12/17/2003 Pub 2003 WI App 248 673 NW2d 328
02-2860	<u>In re the Termination of Parental Rights to Alexander V., a Person Under the Age of 18: Steven V. v. Kelley H.</u>  Were the petitioner's due process rights violated when the circuit court granted summary judgment during the fact-finding phase of a termination of parental rights proceeding, but prior to a fact-finding hearing?  Whether the petitioner should be granted a new trial on the ground that at the time of the plea hearing she was not fully informed of her right, under Wis. Stat. § 48.422(5), to request a continuance of the plea hearing to consult with counsel and that she was unaware of this right until after her parental rights were terminated?	06/12/2003 REVW Oral Arg 10/08/2003	4 Grant	05/28/2003 Pub 2003 WI App 110 263 Wis 2d 241 663 NW2d 817
02-2897-CR 02-2898-CR	<u>State v. R. Deilke</u>  Whether the state can reinstate two operating a motor vehicle while intoxicated charges for the purpose of sentence enhancement after the convictions, based upon a plea agreement that involved the state dropping accompanying charges, were successfully collaterally attacked, and held invalid for penalty enhancement purposes in this case?	10/01/2003 REVW Oral Arg 02/11/2004	3 Eau Claire	07/30/2003 Pub 2003 WI App 151 266 Wis 2d 274 667 NW2d 867

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Case No.	Caption/Issue(s)	SC Accepted	CA Dist/Cty	CA Decision
02-2932	<u>N. Megal v. Green Bay Area Visitor &amp; Convention Bureau, Inc., et al</u>  Can a place of business be found to have constructive notice of a foreign substance on a walkway creating a dangerous condition for customers and employees without proof of the actual length of time the foreign substance was present on the walkway?  Does the exception to the general constructive notice rule, as set forth in <u>Strack v. Great Atl. &amp; Pac. Tea Co.</u> , 35 Wis. 2d 51, 150 N.W.2d 361 (1967), and <u>Steinhorst v. H.C. Prange Co.</u> , 48 Wis. 2d 679, 180 N.W.2d 525 (1970), apply to the facts in this case?	12/16/2003 REVW Oral Arg 04/01/2004	3 Brown	11/19/2003 Pub 2003 WI App 230 267 Wis 2d 800 672 NW2d 105
02-2961	<u>Milw. Metropolitan Sewerage Dist. V. City of Milw.</u>  Did the court of appeals err in holding that a private nuisance existed and that the plaintiff, a non-landowner, could maintain a private nuisance claim?  Is statutory immunity, pursuant to Wis. Stat. § 893.80(4), available to a municipality for negligence based private nuisance action?	02/24/2004 REVW	1 Milw	10/28/2003 Pub 2003 WI App 209 267 Wis 2d 688 671 NW2d 346
02-3014-CR	<u>State v. B. Gruetzmacher</u>  Should Wisconsin criminal court be allowed to correct obvious errors in multi-count sentencing where it is clear that a good-faith mistake was made in an initial sentencing pronouncement, where the court promptly recognizes the error, and where the court – by reducing an erroneous original sentence on one count and increasing the original sentence on another – seeks to impose a lawfully structured sentence that achieves the overall disposition the court originally intended?	11/17/2003 CERT Oral Arg 03/09/2004	4 Waup	---
02-3063-W	<u>Unnamed Person No. 4 v. State of Wisconsin, et al</u>  Does Wis. Stat. § 13.96 create a privilege against a John Doe subpoena for legislative data on Legislative Technology Services Bureau (LTSB) back-up tapes?  Does a subpoena to LTSB for confidential legislative data contained on LTSB created emergency back-up tapes violate the doctrine of separation of powers?  Is Wis. Stat. § 13.96 a rule of proceeding under Wis. Const. Art. IV, § 8, which may only be questioned through the internal political process of the Legislature?  Does a secret subpoena to LTSB for confidential legislative data contained on LTSB created emergency back-up tapes violate Wis. Const. Art. IV, § 16, when a member of the legislature is denied the opportunity to assert his or her privilege on behalf of LTSB?  Is the subpoena overbroad and oppressive?	02/27/2003 CERT Oral Arg 11/04/2003	4 Dane	---

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Case No.	Caption/Issue(s)	SC Accepted	CA Dist/Cty	CA Decision
02-3208	<u>C. Gentili v. Bd. of the Police &amp; Fire Commissioners of the City of Madison, et al</u>  Whether Wis. Stat. § 62.13(5) permits or requires a subordinate to raise constitutional claims, such as the alleged vagueness or overbreadth of administrative rules, as part of the "just cause" challenge in a statutory review of a police and fire commission's disciplinary decision, such that common law certiorari review of those claims is unavailable?	12/16/2003 CERT Oral Arg 04/08/2004	4 Dane	---
02-3293	<u>GPS v. Town of St. Germain</u>  Whether a zoning appeals board's decision-making process, including proposed findings of fact and conclusions of law regarding a zoning variance request, as drafted by the board's attorney before the board's decision or vote, can be excluded from public access based upon an attorney-client privilege?	10/21/2003 REVW Oral Arg 02/12/2004	3 Vilas	07/30/2003 Unp
02-3328	<u>Hutchinson Technology, Inc. v. LIRC, et al</u>  What is the correct standard of review for determining if an employee is disabled under Wisconsin's Fair Employment Act, and what are an employer's accommodation obligations?  Does an employee have the burden to establish that an accommodation is reasonable, or is the burden on the employer to establish that an accommodation is not reasonable?	01/23/2004 REVW Oral Arg 04/27/2004	3 Eau Claire	10/28/2003 Unp
02-3348-CR	<u>State v. J. Wright</u>  Does a defendant who enters a plea of no contest based upon a negotiated plea agreement waive the right to challenge the legality of the trial court's acceptance of the no contest plea?  Can a judgment of conviction be amended postconviction to reflect a conviction of a lesser crime when a factual basis for a greater crime was alleged in the unamended original information and used as a factual basis for accepting a no contest plea entered pursuant to a plea agreement?	01/23/2004 CERT Oral Arg. 04/08/2004	2 Kenos	---
02-3353-FT	<u>State Farm Mutual Automobile Ins. Co. v. N. Langridge</u>  Do <u>Gocha v. Shimon</u> , 215 Wis. 2d 586, 573 N.W.2d 218 (Ct. App. 1997), and <u>Richie v. American Family Mut. Ins. Co.</u> , 140 Wis. 2d 51, 409 N.W.2d 146 (Ct. App. 1987), preclude an insured from receiving benefits under an underinsured (UIM) motorist insurance policy unless the insured personally suffered bodily injury?	10/21/2003 REVW Oral Arg 02/12/2004	2 Racine	Summary Disp.
02-3380	<u>State ex rel. M. Thorson v. D. Schwarz</u>  Whether the petitioner is entitled to sentence credit for the time he was incarcerated between the expiration of his mandatory release date from a criminal conviction and the resolution of ch. 980 proceedings that were ultimately dismissed?	11/17/2003 REVW Oral Arg 03/24/2004	3 Eau Claire	10/28/03 Unp

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Case No.	Caption/Issue(s)	SC Accepted	CA Dist/Cty	CA Decision
*02-3423	<u>State v. Jerrell C.J.</u>  Under the circumstances, did a 14-year-old waive his Miranda rights before his confession and was his uncorroborated admission reliable and sufficient evidence to adjudicate him guilty?  Should the court adopt rules that all juvenile interrogations must be videotaped and in-custody admissions from children under 16 who have not been given the opportunity to consult with a parent or interested adult must be excluded?	03/23/2004 REVW	1 Milw	01/28/2004 Pub 2004 WI App 9 674 NW2d 607
03-0060	<u>In re the Termination of Parental Rights to Zachary B., a Person Under the Age of 18: Monroe County Dept. of Human Services v. Kelli B.</u> (Consol. w/#03-0061 and #03-0062)  Does incestuous parenthood, as set forth in Wis. Stat. § 48.415(7), establish a constitutional basis for termination of parental rights where the mother was the victim of her father's incestuous relationship with her?	06/12/2003 REVW Oral Arg 10/20/2003	4 Monro	04/30/2003 Pub 2003 WI App 88 263 Wis 2d 413 662 NW2d 360
03-0061	<u>In re the Termination of Parental Rights to Nathaniel B., a Person Under the Age of 18: Monroe County Dept. of Human Services v. Kelli B.</u> (Consol. w/#03-0060 and #03-0062)  Does incestuous parenthood, as set forth in Wis. Stat. § 48.415(7), establish a constitutional basis for termination of parental rights where the mother was the victim of her father's incestuous relationship with her?	06/12/2003 REVW Oral Arg 10/20/2003	4 Monro	04/30/2003 Pub 2003 WI App 88 263 Wis 2d 413 662 NW2d 360
03-0062	<u>In re the Termination of Parental Rights to Michael B., a Person Under the Age of 18: Monroe County Dept. of Human Services v. Kelli B.</u> (Consol. w/#03-0060 and #03-0061)  Does incestuous parenthood, as set forth in Wis. Stat. § 48.415(7), establish a constitutional basis for termination of parental rights where the mother was the victim of her father's incestuous relationship with her?	06/12/2003 REVW Oral Arg 10/20/2003	4 Monro	04/30/2003 Pub 2003 WI App 88 263 Wis 2d 413 662 NW2d 360
03-0097	<u>Mared Industries V. A. Mansfield, et al</u>  Was the summons and complaint effectively served on the defendant pursuant to Wis. Stat. § 801.01(d) by serving his "apparent agent?"	02/24/2004 REVW	1 Milw	01/28/2004 Unp
03-0098	<u>T. Smaxwell, et al v. M. Bayard, et al</u>  Can a landowner be held liable, on common law negligence grounds, for injuries caused on a landowner's property by a known dangerous dog not owned by the landowner, see <u>Gonzales v. Wilkinson</u> , 68 Wis. 2d 154, 227 N.W.2d 907 (1975), and <u>Malone v. Fons</u> , 217 Wis. 2d 746, 580 N.W.2d 697 (Ct. App. 1998)?	01/23/2004 REVW Oral Arg 04/26/2004	2 Manito	08/27/2003 Unp

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Case No.	Caption/Issue(s)	SC Accepted	CA Dist/Cty	CA Decision
03-0226	<u>L. Gehin v. Wis. Group Ins. Board</u>  Did the court of appeals err in holding that it is sufficient for an administrative agency to base its finding and decision on hearsay evidence that is not corroborated by competent, non-hearsay evidence?	02/24/2004 REVW	4 Dane	11/19/2003 Unp
03-0417-CR	<u>State v. G. Hale</u>  Did the defendant and codefendant share a similar interest and motive in cross-examining a prosecution witness, such that the witness' testimony taken at the codefendant's trial could be admitted against the defendant under the "former testimony" exception to the hearsay rule?  Was the witness' prior testimony admissible under the "residual" hearsay rule?  Did the admission of the prior testimony violate the defendant's rights to confrontation?	02/24/2004 REVW	2 Keno	11/19/2003 Pub 2003 WI App 238 672 NW2d 130
03-0421	<u>Dairyland Greyhound Park, Inc. v. J. Doyle, et al</u>  Does the <u>Wisconsin Constitution</u> , art. IV, § 24, as amended in 1993, and Wis. Stat. § 14.035, prohibit the Governor from entering into agreements for Indian gaming compacts as provided for under the Indian Gaming Regulatory Act, 25 U.S.C., § 2701-02?	09/12/2003 CERT <b>Certification Vacated &amp; Remanded 03/30/2004 2004 WI 34</b>	4 Dane	---
03-0471	<u>J. Weber, et al v. A. White, et al</u>  Did the circuit court err in denying the defendants' motion to vacate the jury's award of \$5,000 for future healthcare expenses because the testimony of the plaintiff's sole witness on the issue of future healthcare needs was allegedly contradictory?	12/16/2003 REVW Oral Arg 04/07/2004 <b>Racine</b>	1 Milw	11/19/2003 Pub 2003 WI App 240 267 Wis 2d 862 672 NW2d 151
03-0500	<u>H. Hempel v. City of Baraboo, et al</u>  Did the court of appeals err in finding that a public employer may withhold from an open records request all documents generated during the employer's investigation into a complaint that one of its employees had engaged in sexual harassment by promising confidentiality to persons from whom the employer received information during the course of the investigation?	02/24/2004 REVW	2 Sauk	12/17/2003 Pub 2003 WI App 254 674 NW2d 38
03-0534 - 03-0553	<u>Vlg of Trempealeau v. M. Mikrit</u>  Did the circuit court have competency to proceed in this action when the village failed to follow the requirements set forth under Wis. Stat. § 66.0113 in the issuance of municipal ordinance violation citations?  If not, can the competency to proceed be challenged after trial and a direct appeal?	10/21/2003 REVW Oral Arg 02/19/2004	3 Trempe	09/24/2003 Unp

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Case No.	Caption/Issue(s)	SC Accepted	CA Dist/Cty	CA Decision
*03-0610	<u>J. Petta, et al v. ABC Ins. Co.</u>  Does the "made-whole doctrine" in a wrongful death action bar a subrogation claim by the insurer of the deceased when the wrongful death plaintiff's have not been made whole and are children of the insured; see <u>Rimes v. State Farm Mut. Auto. Ins. Co.</u> , 106 Wis. 2d 263, 316 N.W.2d 348 (1982)?	03/23/2004 REVW	3 Sawyer	11/19/2003 Pub 2003 WI App 241 672 NW2d 146
03-0662	<u>C. Bosco v. LIRC, et al</u>  Whether the petitioner's insurance carrier engaged in "bad faith" pursuant to Wis. Stat. § 102.18(1)(bp) by failing to pay benefits under Wis. Stat. § 102.23(5) after an award by LIRC and prior to challenging that award in the courts?  Is an insured employer separately liable for "bad faith" penalties for failing to issue benefits during a court appeal by its insurer on the issue of occupational disease date of injury?	11/17/2003 REVW Oral Arg 03/09/2004	2 Kenos	10/28/2003 Pub 2003 WI App 219 267 Wis 2d 293 671 NW2d 331
03-0689	<u>Insurance Company of N.A. v. Cease Electric, Inc</u>  Whether the economic loss doctrine applies to contracts that involve the provision of services, and whether it applies to mixed contracts?	02/24/2004 REVW	2 Walw	01/28/2004 Pub 2004 WI App 15 674 NW2d 886
03-0910-OA	<u>M. Panzer, et al v. J. Doyle, et al</u>  Does the Wisconsin Constitution, art. IV, § 24, as amended in 1993, and Wis. Stat. § 14.035, prohibit the Governor from entering into agreements that extend and expand Indian gaming compacts as provided for under the Indian Gaming Regulatory Act, 25 U.S.C., § 2701-02?	09/12/2003 ORIG Oral Arg 01/27/2004	4 Dane	---
03-0952-CR	<u>State v. J. Faust</u>  Whether, under <u>State v. Krajewski</u> , 2002 WI 97, 255 Wis. 2d 98, 648 N.W.2d 385, a consensual breath sample given by a defendant following a lawful drunk driving arrest bars police from requiring that the defendant also provide a blood sample for testing for evidence of intoxication or prohibited alcohol concentration without first obtaining a warrant?	12/16/2003 REVW Oral Arg 04/06/2004 <b>Racine</b>	2 Sheb	11/19/2003 Pub 2003 WI app 243 267 Wis 2d 783 672 NW2d 97
*03-1086	<u>G. Olstad v. Microsoft Corp., et al</u>  Does Wisconsin's antitrust act, Wis. Stat. § 133.03, apply to interstate commerce affecting Wisconsin commerce?	03/23/2004 CERT	1 Milw	---
*03-1114	<u>City of Pewaukee v. T. Carter</u>  Is a municipality prohibited from obtaining a new trial in circuit court when appealing a municipal court decision under Wis. Stat. § 800.14(4), when the municipality presented sworn witnesses and testimony at the municipal court trial, but the matter was decided by the grant of the defendant's motion to dismiss at the close of the municipality's case-in-chief?	03/23/2004 REVW	2 Wauke	12/17/2003 Pub 2003 WI App 260 673 NW2d 380

**NOTE:** The statement of the issue is cursory and does not purport to be an all-inclusive, precise statement of the issues in the case. Readers interested in a case should determine the precise nature of the issues from the record and briefs filed with the Supreme Court.

# APPENDIX

## WISCONSIN SUPREME COURT PENDING CASES

By Cornelia G. Clark, Clerk of Supreme Court  
(608) 266-1880

Case No.	Caption/Issue(s)	SC Accepted	CA Dist/ Cty	CA Decision
03-1493-CR	<u>State v. T. Jadowski</u>  Is a minor sexual assault victim's intentional misrepresentation of his or her age a defense to a charge of violating Wis. Stat. § 948.02(2) (2001-02)?  If not, does the Wisconsin statutory scheme set forth in Wis. Stat. §§ 939.23(6), 939.43(2) and 948.02(2) deny a defendant his or her constitutional rights under the First, Fifth and Fourteenth Amendments to the United States constitution and Article I, § 8 of the Wisconsin Constitution?	12/16/2003 CERT Oral Arg 04/27/2004	2 Sheb	---
03-1817	<u>D. Harder, et al v. C. Pfitzinger, et al</u>  Did the court of appeals err in determining that the plaintiffs had to appeal from the final circuit court order and not from the subsequent judgment that dealt with the taxation of costs?	12/16/2003 REVV Oral Arg 03/24/2004	2 Wauke	Memo Opn.
03-1877	<u>In re the Paternity of John R.B.: Barbara B. v. Dorian H.</u>  Is retroactive application of Wis. Stat. § 767.32(1) unconstitutional?  Are equitable remedies available to those who entered into extrajudicial agreements for the purpose of eliminating the obligation to pay interest on child support arrearages, when the payor relied on the payee's promise, and the payee reneged on the promise 18 years later?	02/24/2004 REVV	2 Keno	01/28/2004 Unp

**NOTE:** The statement of the issue is cursory and does not purport to be an all-inclusive, precise statement of the issues in the case. Readers interested in a case should determine the precise nature of the issues from the record and briefs filed with the Supreme Court.